

09/764,561

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Linda M. Sivik **44,982**

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Signature

Case 8386

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of :
R. W. Glenn, Jr., et al :Confirmation No. 6898
Serial No. 09/764,561 : Group Art Unit 1615
Filed January 17, 2001 : Examiner Humera Sheikh
Title Delivery of Reactive Agents Via :
Self Emulsification for use in Shelf-Stable :

Products: 162480 09764561

02/11/2003 RHARRON Products 162480 09764561

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RESPONSE TO RESTRICTION REQUIREMENT UNDER 35 U.S.C. 121

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

In response to the July 16, 2002 Restriction Requirement received in connection with the above-identified application, the time for response being extended by six (6) months, pursuant to the fee charged to the Assignee's Deposit account in the papers submitted herewith, please consider the remarks made herein.

Invention Synopsis

The present invention relates to a treatment composition comprising a liquid emulsifiable concentrate of a reactive agent comprising, by weight one or more reactive agents wherein the reactive agent is comprised of one or more reactive groups of the electrophilic, nucleophilic or protected thiol type, a water immiscible solvent, and one or more surfactants. While not being bound to theory, it is believed that the such low energy emulsification with minimal or no agitation by the consumer, e.g., by soft shaking of bottle

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or suitable container, is achieved via inclusion of specialized surfactants and/or dispersing aides within the liquid concentrate that achieve either ultra-low interfacial tension and/or substantial interfacial disruption between the liquid concentrate and the aqueous phase upon dilution with water or a separately packaged aqueous composition.

Surprisingly, it has been discovered that the liquid emulsifiable concentrates of the present invention can achieve self emulsification even upon addition to a substantially thickened aqueous composition to produce a resulting homogenous and viscous emulsion with minimal agitation by the consumer, e.g., via gentle shaking of the bottle or suitable container. This is in marked contrast to conventional thickened emulsions which necessitate considerable energy input that can only be attained by employing high energy processing equipment within a laboratory or a manufacturing plant, e.g., a lightning mixer or agitated vessel. Accordingly, the liquid emulsifiable concentrates of the present invention enable isolation upon storage for acceptable chemical shelf stability while still enabling emulsion delivery with minimal inconvenience to the consumer.

Response to Restriction Requirement

Restriction of Applicants' claimed invention has been required under 35 U.S.C. §121. The Office Action contends that the applicant's response argues the separate patentability of a compartmentalized kit with separate formulations over the composition per se. Hence, restriction is being required between the two patentably distinct inventions. Restriction to one of the following inventions is required under 35 U.S.C. §121:

- I. Claims 1-27 and 41-42, drawn to a treatment composition and method of using, classified in class 424, subclass 70.1.
- II. Claims 28-40, drawn to a kit and method of using, classified in class 424, subclass 400.

Applicants traverse this restriction. Applicants respectfully submit that it would not be unduly burdensome to search for and examine all of the claims in the present application. Restriction is proper only when the inventions are independent or distinct as claimed and it would be unduly burdensome to search for and examine all of the inventions in a single application (see MPEP 803). While restriction between these claims

may be permitted in the instant situation, it is submitted that prosecution of all of the claims in a single application would also be permitted and would indeed be quite appropriate. It is submitted that in the present case, any prior art search set up for Claim 1 would be coextensive with that for the dependent claims and claims directed to a kit containing a composition according to Claim 1 or an emulsifiable concentrate, because the novel compositions and kit, per se, *vis-a-vis* the art, involve the same matter.

Further, Applicants remarks regarding a kit for use in the present invention was directed toward pointing out that use of a kit in the cosmetic art has only been known when using two aqueous solution i.e. aqueous bleach and aqueous bleach. The present invention has surprisingly developed a system for using an anhydrous system (not aqueous) comprising the reactive agent in combination with an aqueous system to form the desired aqueous emulsion form for the consumer. However, the kit is still directed toward the use of a liquid emulsifiable concentrate, as is the treatment compositions comprising a liquid emulsifiable concentrate of a reactive agent.

Conclusion

In view of the foregoing remarks, it is therefore respectfully submitted that the restriction requirement be withdrawn in the instant case and Claims 1-42 be permitted to be prosecuted in the same application. In the event that this restriction requirement is made final, Applicants hereby provisionally elect Group I that includes Claims 1-27 and 41-42, for continued prosecution; holding Claims 28-40 (Group II) in abeyance under the provisions of 37 C.F.R. § 1.142(b) until final disposition of the elected claims.

Respectfully submitted,
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By Linda M. Sivik

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